

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**LUFTI SHAFQ TALAL a/k/a JAMES WILLIAM TAYLOR V. STATE OF
TENNESSEE**

**Appeal from the Circuit Court for Hickman County
No. 05-5100C R.E. Lee Davies, Judge**

No. M2005-02964-CCA-R3-HC - Filed May 23, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petitioner has appealed the trial court's order summarily dismissing the petition for the writ of habeas corpus. In that petition, the petitioner alleges that he was improperly sentenced, that the trial court lacked authority to determine his release eligibility and that the trial court failed to render a final sentencing judgment regarding his first degree murder conviction. Upon a review of the record in this case we are persuaded that the trial court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

James William Taylor, Pro Se, Only, Tennessee..

Paul G. Summers, Attorney General & Reporter; Sophia S. Lee, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In August of 1988, the petitioner was convicted of first degree murder, second degree burglary and robbery in Williamson County Circuit Court. The petitioner was sentenced to life imprisonment for the first degree murder conviction, fifteen years for burglary and fifteen years for robbery. The trial court ordered the sentences to run consecutively. The petitioner appealed his conviction. On direct appeal, this Court summarized the underlying facts as follows:

The State's proof showed that [the petitioner] broke into the Franklin home of 89-year-old Frances Schmidt during the night, after unscrewing the light bulb from an outdoor light fixture and cutting the telephone lines leading into her apartment. [The petitioner] either suffocated the victim, or attempted to suffocate her, causing her heart to fail. He took several of Frances Schmidt's rings from her apartment and sold two of them to a man named Charles Alexander. [The petitioner] made vague statements to others about having made "a hit" and having killed someone. He was also overheard to have said that he "didn't mean to hurt the bitch but she wouldn't shut up."

State v. James Taylor, No. 89-93-III, 1990 WL 50751, at *1 (Tenn. Crim. App., at Nashville, Apr. 25, 1990), perm. app. denied, (Tenn. Oct. 8, 1990). On appeal, the petitioner challenged the sufficiency of the evidence, the trial court's decision not to exclude a juror for cause, the trial court's failure to dismiss the entire jury venire, the trial court's decision to allow evidence of other crimes to be admitted, the introduction of autopsy photographs of the victim, the admissibility of the testimony of a State witness, the rebuttal testimony of a detective and his sentence. This Court found no merit to the petitioner's issues and affirmed the judgment of the trial court. Id. at *7. The supreme court denied permission to appeal.

In April of 1991, the petitioner filed a pro se petition for post-conviction relief in which he argued that he received ineffective assistance of counsel at trial and that the State withheld exculpatory evidence. See State v. James Taylor, No. 01C01-9809-CC-00384, 2000 WL 641148, at *1 (Tenn. Crim. App., at Nashville, May 19, 2000), perm. app. denied, (Tenn. Sept. 25, 2000). After a hearing, the post-conviction court denied relief and this Court affirmed the post-conviction court's judgment on appeal. Id.

Subsequently, the petitioner filed a pro se petition for habeas corpus relief in the Circuit Court for Lauderdale County.¹ The petitioner next filed a second pro se petition for writ of habeas corpus. The trial court summarily dismissed that petition on August 26, 2002, finding that the trial court had jurisdiction and the petitioner's sentence was not expired. Further, the trial court determined that no grounds were alleged in the petition which would entitle the petitioner to a hearing and that it appeared that the petitioner may have already raised identical issues in federal court.

On July 22, 2003, the petitioner filed another petition for habeas corpus relief in Hickman County alleging that his presentments were fatally defective, thereby depriving the trial court of proper jurisdiction; the trial court violated his constitutional rights; the trial court erred when it ordered the sentences to run consecutively; the trial court erred by finding the petitioner to be a Range II offender; the trial court approved an illegal judgment of conviction; and the habeas corpus court erred by denying the petitioner a right to respond to the State. The State filed a motion to

¹The technical record does not contain a copy of the petitioner's first petition for writ of habeas corpus.

dismiss the petition for failing to state a claim. On August 26, 2003, the trial court granted the State's motion to dismiss the petition. This Court affirmed the trial court's judgment. See James W. Taylor aka Lutfi S. Talal v. Wayne Brandon, No. M2003-02235-CCA-RE-HC, 2004 WL 2984842, at *4 (Tenn. Crim. App., at Nashville, Dec. 14, 2004), perm. app. denied, (Tenn. Mar. 21, 2005).

On November 2, 2005, the petitioner filed another pro se petition for writ of habeas corpus relief alleging that he was improperly sentenced, that the trial court lacked authority to determine his release eligibility and that the trial court failed to render a final sentencing judgment regarding his first degree murder conviction. On November 3, 2005, the petitioner filed an amended petition alleging that the trial court also lacked jurisdiction to sentence the petitioner to two separate sentences for the same offense unrelated to the first degree murder, second degree burglary and robbery convictions.

On December 12, 2005, the State filed a motion to dismiss the petition for failing to satisfy the statutory procedural requirements under Tennessee Code Annotated section 29-21-107 and for failing to state a colorable claim. The trial court granted the motion to dismiss, and the petitioner filed a timely notice of appeal.

Analysis

On appeal, the petitioner claims that the trial court lacked jurisdiction to determine his release eligibility date, that the trial court erred in "allowing the jury to fix . . . punishment for first degree murder at life imprisonment," that the trial court failed to enter a final sentencing judgment on the first degree murder conviction, and that the trial court lacked authority, in an unrelated case, to sentence the petitioner for which he "had previous[ly] been given a sentence."

Initially we note that several of the petitioner's issues have been previously determined in a prior proceeding of the same character. The petitioner has previously argued in habeas corpus petitions that the trial court erred in determining the petitioner's release eligibility date and that the trial court failed to enter a judgment of conviction for his first degree murder conviction. Id. A petitioner may not "relitigat[e] questions previously determined adversely to him in . . . separate habeas corpus cases by courts of competent jurisdiction." Billy Joe Harris v. Fred Raney, Warden, No. 02C01-9808-CC-00240, 1999 WL 134732, at * 1 n.1 (Tenn. Crim. App., at Jackson, Mar. 12, 1999) (quoting Myers v. State, 462 S.W.2d 265, 269 (Tenn. Crim. App. 1970) (internal citations omitted)). Accordingly, the petitioner is not entitled to relief on these claims.

A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). However, if after a review of the habeas petitioner's filings the trial court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel.

Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619, (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

A petitioner has the burden of establishing by a preponderance of the evidence that the judgment he attacks is void or that his term of imprisonment has expired. State ex rel. Kuntz v. Bomar, 381 S.W.2d 290, 291 (Tenn. 1964). If the petitioner fails to establish that his conviction is void or his term of imprisonment has expired, he is not entitled to immediate release. Passarella, 891 S.W.2d at 627-28.

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 15, 19-20 (Tenn. 2004); Archer, 851 S.W.2d at 165. The formal requirements for an application or petition for writ of habeas corpus are found at Tennessee Code Annotated section 29-21-107:

- (a) Application for the writ shall be made by petition, signed by either the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.
- (b) The petition shall state:
 - (1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and if unknown, describing the person with as much particularity as practicable;
 - (2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;
 - (3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and
 - (4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings there shall be produced, or satisfactory reasons should be given for the failure to do so.

Tenn. Code Ann. § 29-21-107. "A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements" Hickman, 153 S.W.3d at 21.

The petitioner herein failed to adhere to the mandatory requirements for habeas corpus petitions under Tennessee Code Annotated section 29-21-107. Specifically, the petitioner failed to address whether the legality of his restraint has been previously adjudicated in violation of Tennessee Code Annotated section 29-21-109(b)(3). Further, he failed to attach a copy of the judgment. Tenn. Code Ann. § 29-21-109(b)(2). The petitioner has repeatedly claimed that there is no judgment of conviction as to his first degree murder conviction. However, as this Court pointed out in a previous

habeas corpus appeal, there is no proof in the record to support this claim and such an omission would have surely been noted in one of the petitioner's previous appeals. See James W. Taylor aka Lutfi S. Talal v. Wayne Brandon, 2004 WL 2984842, at *3. Consequently, the trial court did not err in summarily dismissing the petition.

Finally, the petitioner's last issue, in which he appears to assert that he was punished twice for the same offense, has no merit. According to the petitioner, he pled guilty to one count of simple possession of marijuana on April 20, 1984. The petitioner also acknowledges that he pled guilty to one count of possession of marijuana with the intent to sell and deliver on December 21, 1988. The petitioner argues that his second plea was not entered voluntarily, knowingly or intelligently because it was based on a sentence to which he agreed. The petitioner's claim, even if true, would merely render his convictions voidable, rather than void. Thus, the petitioner is not entitled to habeas corpus relief on this issue. The trial court properly dismissed the habeas corpus petition.

_____ Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge. . . .

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20. We affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE